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In the Matter of Arbitration Between:

ARBITRATION AWARD NO. 535

INLAND STEEL COMPANY
- and -
UNITED STEELWORKERS OF AMERICA, AFL-CIO, Local Union No. 1010

Grievance No. 3-G-54
Appeal No. 806

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. R. H. Ayres, Assistant Superintendent, Labor Relations Department
Mr. W. A. Dillon, Assistant Superintendent, Labor Relations Department
Mr. T. J. Peters, Divisional Supervisor, Labor Relations Department
Mr. Charles Pepelaq, General Furnace Foreman, Iron Production

For the Union:

Mr. Cecil Clifton, International Representative
Mr. John Gothelf, Grievance Committeeman
Mr. Al Garza, Chairman, Grievance Committee

STATEMENT

Pursuant to proper notice a hearing was held in GARY, INDIANA, on February 19, 1963.

THE ISSUE

The grievance reads:

"The aggrieved, F. Villarreal, Ch. #18854, contends that he should have filled the occupation of B Unloader in the Hi-line Sequence on July 4, 1961, instead of M. Salas, Ch. #20035. F. Villarreal has the greatest amount of Departmental Seniority."

The relief sought reads:

"The aggrieved requests all moneys lost and in the future promote according to provisions in Contract."

DISCUSSION AND DECISION

On July 3, Mr. Cruz, a B Unloader, became ill. The Foreman did not have certain knowledge that Mr. Cruz would be available as scheduled for the July 4 holiday work. Ordinarily, Laborers are not scheduled in this area on holidays. Although degrees of probability may be here involved, the Foreman was in a position of not knowing whether Mr. Cruz would or would not be present on the holiday. It may be said that it was more probable that he would not be present. Mr. Salas was asked if he would work the holiday and replied in the affirmative. The Grievant then complained to the Foreman that he had not been given this holiday turn. Both employees were previously scheduled so that they would be paid 40 hours of pay during the week. Mr. Cruz was absent on July 4 and Mr. Salas was assigned to the B Unloader job.

On the basis of prior awards, the Company was not required to assign the Grievant to this July 4 turn. This present factual situation does not present a case where a senior employee is complaining that he would not get a full week's pay. The Union concedes that if this were not an upgrading case then under prior awards the Grievant would not have been entitled to this turn as a Laborer on July 4. Overtime or premium pay opportunities are shared.

While several prior arbitration awards are equally controlling, it is believed that citation need only be made of the more recent Awards Nos. 397 and 420. In Award No. 397, this Arbitrator stated:

> "The language is clear and unambiguous. These vacancies are to be 'filled by the employee on the turn'. The Grievant here was not 'on the turn'. Prior Awards recognize that the Company is under no obligation to so schedule employees so that they can be 'on the turn'. The Company has no obligation to make an employee 'most conveniently available' by its scheduling.
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> This Arbitrator must note that in several prior arbitration Awards, the Parties were clearly made aware of the distinction between the terms 'may' and 'shall'. Even if it be conceded that the Company should have made the Grievant 'conveniently available', the same sentence contains the phrase 'may be filled'. Because the Company exercises a right in a particular manner over a long period of time, does not convert the essentially permissive right into an obligation. The quotations from the Transcript in the earlier case cited by the Parties makes it apparent that the Company at all times alleged that the exercise of its rights were based

upon the permissive term 'may'. The Company Representative there stated:

> 'Now, in preparing our case today, we think we have shown you that Article VII, Section 6(a), Paragraph 146 of the Agreement does not provide that the senior Labor Pool group employee, (1) has the right to be scheduled on the highest paying job, or (2) that he has the right to be made most conveniently available, so that he is in a position to be upgraded to fill a temporary vacancy on the higher paying job.' (Tr. 121)."

In Award No. 420 Arbitrator Cole stated:

> "The cited sections of the Agreement have been the subject of many arbitrations, and their provisions are now most familiar. The governing part is that in Section 6 (a), Paragraph 146, which in speaking of the manner of filling temporary vacancies, states:
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> > '...except that, where such vacancy is on the lowest job in the sequence, it may be filled by the employee in the labor pool group (including available employees in single job sequences) most conveniently available in accordance with their seniority standing...'
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> The controlling phrases are: 'may be filled' and 'most conveniently available.' In a number of cases I and other arbitrators have clearly pointed out that the permissive, 'may be filled,' must be distinguished from the mandatory, 'shall be filled,' which is used in this paragraph both before and after the quoted provision. See Arbitration Numbers 298, 332, and 358.
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> 'Most conveniently available,' coupled with the permissive 'may,' indicates that the parties intended to leave some area of discretion with Management in filling temporary vacancies. If it were intended that the senior employee merely physically present on the turn would automatically be given the temporary vacancy if he is in the labor pool or in a single job sequence, then no purpose would have been served by saying 'most conveniently available'."

It must be noted that even where the senior employee is actually present on the turn, as was the case in Arbitration No. 420, the Company is not required to upgrade him under all circumstances. This Arbitrator must observe that numerous prior awards have indicated that language such as appears in Article VII, Paragraph 6, constitutes a specific provision and takes priority over the broad general provisions of Sections 1 and 5 of Article VII. In Article VII, Section 6, the Parties use both the term "may" and the term "shall". In referring to temporary vacancies involving Labor Pool employees the term "may" is employed. Where temporary vacancies existed beyond 21 days and as to certain other classes of employees the term "shall" is used. When the Parties referred to temporary vacancies above the lowest job in the sequence the Parties also have used the expression "shall".

This language was adopted by experienced draftsmen who are familiar with the long line of court and arbitration decisions involving the permissive nature of the term "may". Based upon the long line of arbitration awards between these Parties involving identical contractual language and similar factual situations, this Arbitrator must hold that there is a settled construction of the language of Article VII, Section 6 (a), i.e., "except that, where such vacancy is on the lowest job in the sequence it may be filled by the employee in the Labor Pool Group *** most conveniently available". This Award is to be distinguished from this Arbitrator's Award in Arbitration No. 516 because the latter award was concerned solely with the interpretation of the first clause of Article VII, Section 6 (a), involving the filling of vacancies other than on the lowest job in the sequence.

AWARD

The grievance is denied.

Peter M. Kelliher

Dated at Chicago, Illinois

this 9 day of April 1963.